

maximum authorized by law; or (4) the sentence is otherwise subject to collateral attack. United States v. Kelly, 2013 WL 139500, *1 (D.S.C. Jan. 10, 2013); 28 U.S.C. § 2255(a).

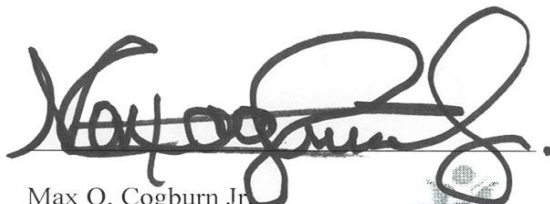
Review of the instant motion does not reveal that defendant is attempting to file a Section 2255 motion; rather, the form motion defendant has used appears to be more in line with a so-called “sovereign citizen” pleading. Thus, there is no reason to construe the instant motion as a Section 2255 petition under Castro v. United States, 540 U.S. 375 (2003). Indeed, it is unlikely that such motion would survive initial review.

Such motion does, however, suggest that defendant may have some collateral challenge to his conviction. While the court will deny the instant criminal motion without prejudice, it will instruct the Clerk of Court to send defendant a Section 2255 form petition. Finally, defendant is advised that he should carefully consider the filing of a Section 2255 petition as he may file only one Section 2255 petition without leave of the appellate court and that he has only one year from the court’s Judgment becoming final to file such Section 2255 petition with this court.

ORDER

IT IS, THEREFORE, ORDERED that defendant’s Motion to Dismiss (#39) is DENIED without prejudice and the Clerk of Court is instructed to send defendant a copy of the Section 2255 form Petition along with a copy of this Order.

Signed: March 5, 2015


Max O. Cogburn Jr.
United States District Judge